STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Bulletin 2013-20-INS

In the matter of

Hospital Indemnity and Fixed Indemnity Policies

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Issued and entered
this 13th day of November 2013
by Annette E. Flood
Director

Under federal law, fixed indemnity (or "hospital indemnity") plans are exempt from many of the requirements of the Patient Protection and Affordable Care Act (ACA), including, among other things, compliance with the prohibition on annual limits and preexisting condition exclusions, and the "essential health benefits" requirement. Pursuant to federal regulations, fixed indemnity or hospital indemnity plans are exempt only if the following conditions are met:

- the benefits are provided under a separate policy, certificate, or contract of insurance;
- there is no coordination between the benefits provided and an exclusion of benefits under any group health plan maintained by the same sponsor; and
- the benefits are paid with respect to an event without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same sponsor.
- the plan pays a fixed dollar amount per day (or other period of time) of hospitalization or illness, regardless of the amount of expenses incurred.

(45 CFR 146.145 (small and large group markets); 45 CFR 148.220 (individual market)).

According to these regulations, plans paying benefits on a per-visit or per-event basis (e.g., doctors' visits at $50 per visit, or prescription drugs at $15 per prescription) do not meet the federal definition of "fixed indemnity" plans and thus are not exempt from the requirements of the ACA.

Like many states' laws, Michigan's laws do not require fixed indemnity plans to set a fixed dollar amount per period of hospitalization or illness. Therefore, fixed indemnity plans which have been approved by the Department of Insurance and Financial Services (DIFS) may not meet the requirements of 45 CFR 146.145 and 45 CFR 148.220.

DIFS recognizes that issuers will require time to comply with the new federal guidance. Accordingly, DIFS will provide a transition period for compliance. Therefore, any group or individual hospital indemnity plans issued and in force prior to January 1, 2014 may remain in effect at the option of the insured or health insurance issuer. DIFS will enforce the new definition of fixed indemnity plan for purposes of compliance with federal law for all hospital indemnity or other fixed indemnity plans issued or renewed on or after January 1, 2014.

It is possible that some individuals are not aware that fixed indemnity plans are exempt from the ACA's "essential health benefits" requirement and, therefore, do not provide an individual with "minimum essential coverage" as required by the ACA. In addition, those individuals may not be aware that they will be subject to penalties under the ACA if they do not obtain more comprehensive medical insurance.

To reduce confusion during and after the transition period and to protect consumers from inadvertently incurring penalties under the ACA, DIFS requests that issuers of group and individual hospital indemnity and other fixed indemnity plans notify every individual currently insured under such plans that the coverage does not satisfy the "minimum essential coverage" requirement of the ACA. This notice should be provided at the issuer's earliest opportunity, and should also be provided with all such policies issued or renewed on or after January 1, 2014.

Specified disease policies, such as cancer-only policies, are separate types of indemnity policies and will continue to be regarded as an excepted benefit as provided for by federal law.

Any questions regarding this bulletin should be directed to:

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